

EXHIBIT A

THE SECRETARY OF THE INTERIOR

WASHINGTON

AUG 22 1997

Memorandum

To: Special Trustee for American Indians

Assistant Secretary - Indian Affairs

Deputy Commissioner for Indian Affairs

Director, Minerals Management Service

Director, Bureau of Land Management

From: The Secretary

Subject: Trust Improvements Project Definition

I have met with the Special Trustee for American Indians and discussed at length the recommendations contained in the Special Trustee's April 11, 1997 Strategic Plan. Notwithstanding my reservations about certain aspects of his Plan, selected trust systems improvements and data cleanup efforts in the Plan can and should proceed as soon as possible within the organizational structure of the Department. This memorandum outlines the Department's approach for improving Indian Trust Management and engages affected Bureaus and Offices in the implementation planning and execution activities necessary to ensure success. The Special Trustee and I have agreed to the following.

Trust Management Project Scope

1. **Data and Backlog Cleanup.** Our goal is to eliminate bad data and overcome backlogs to ensure Indian trust records are accurate and up to date. Projects either needed, planned, or currently underway in the Department (principally in the Office of Trust Funds Management, the Bureau of Indian Affairs (BIA), and the Office of Hearings and Appeals (OHA)) to clean up trust and trust funds-related files and data are a high priority, and are to proceed in a coordinated fashion.

2. **Individual Indian Monies (IIM) Accounting System.** The Office of the Special Trustee, in coordination with the Department's Chief Information Officer, is to acquire, pilot, and install a Core Trust Accounting System (also referred to as the IIM Accounting System) module, suitable for both Tribal and IIM accounts.

3. **Trust Asset and Accounting Management System.** The Office of the Special Trustee, in coordination with the Department's Chief Information Officer, and the heads of the BIA, BLM and MMS, will evaluate, acquire, and pilot standardized, commercial off-the-shelf general trust management system technology to the extent practicable. Following successful testing and piloting, full implementation will proceed. The supporting land title and records and minerals royalty systems, such as the BIA's LRIS system will also be evaluated and upgraded, as appropriate.

4. **Related Activities.** Supporting efforts will also be evaluated, to include a joint trust records management solution (which may include electronic records/imaging technology), developing and issuing policy and procedures manuals, providing staff and user training, and improving internal controls.

5. **Duration.** The Special Trustee and I have agreed that the trust management improvements should

occur within a three year period, beginning in 1998.

6. Excepted Issues. It is further agreed that the Special Trustee's Strategic Plan recommendations in the following areas are specifically deferred in this agreement and the scope of the project.

- a. New management and organization structures outside of the Department of the Interior.
- b. Introducing new trust products or services based on the prudent investor rule.
- c. An Indian development bank.

The fractionation of Indian lands issue also needs to be resolved. The Congress has the Administration's recommended proposal on fractionation for further consideration.

Project Management/Oversight

Management of Indian trust lands and Indian trust funds is a Departmental mission, and responsibility for its accomplishment rests with me. The Special Trustee, with the full participation of other Departmental officers, will take the lead in developing a high level Implementation Plan and overseeing its execution. The project will be performed under the guidance and oversight of a steering committee that I or the Chief of Staff will chair. The steering committee will be comprised of the Special Trustee, the Solicitor, the Assistant Secretaries - Indian Affairs, - Land and Minerals Management, and - Policy, Management and Budget, and the Chief Information Officer.

The Chief Information Officer will provide Departmental oversight on the systems and information resources management aspects of these efforts. All trust system acquisitions will be accomplished in compliance with the Clinger-Cohen Act and implementing Raines Rules.

Following development of the high level Implementation Plan, respective Bureau and Office heads are individually responsible for implementing trust management improvement activities in your respective line

organizations.

Resources

The Special Trustee and I have agreed that the Office of Special Trustee will initiate the trust system and records cleanup efforts outlined above with funds appropriated to the Special Trustee in FY 1997 and FY 1998. Similarly, the BIA trust systems, records management, and data/probate cleanup initiatives will be funded with FY 1997 and FY 1998 funds appropriated for those purposes. In addition, a consolidated budget will be developed and coordinated and under the oversight of the Special Trustee, who will review and certify plans and bureau budgets in accordance with the American Indian Trust Funds Management Reform Act of 1994.

Budgetary requirements relating to this effort in the FY 1999 and FY 2000 time frames will be coordinated and addressed jointly to the Congress by the Department, the Office of the Special Trustee, and the BIA.

Outreach/Consultation/Coordination

An Outreach and Consultation Plan designed to reach and inform affected account holders, Indian Tribes and the Congress will be developed and executed in support of the trust management improvements.

Next Steps

Over the next 30 - 60 days, you will work jointly to prepare a high level implementation plan and

schedule for acquiring and implementing trust systems and completing records cleanup. The plan must have the concurrence of the heads of key affected bureaus and offices, include sufficient information to satisfy Clinger-Cohen Act requirements, and provide satisfactory detail to guide, at a high level, trust improvement efforts. It must identify sub projects, tasks and task work plans, resource estimates, accountable officials and measures by which results will be judged. The Office of the Special Trustee will take the lead, but I expect affected and key bureaus and offices to work closely with the Special Trustee, cooperating and participating fully in drafting and publishing the high level implementation plan.

My goal--and your responsibility--is to build success so that full implementation of the new trust systems can occur over a three year period starting in 1998, enabling the Department to fulfill its trust responsibilities to the Indian peoples and to comply with the American Indian Trust Fund Management Reform Act of 1994.

cc: AS-PMB

AS-LM

DAS-PMB for Budget & Finance

CIO

PIR

POB

EXHIBIT B

EXHIBIT C

BIA PROBATE WORK PROCESS

The process of probating an Indian trust estate has three major components, one of which is repeated at BIA agency office levels. The Offices involved are the BIA Agency Offices, the ALJ (Office of Hearing and Appeals) and Land Titles and Records Offices. The following is a brief summary of the activities at each level.

I. actions of bia agency offices upon notification of death

- a. Assumes jurisdiction and custody of trust property, notifies OTFM to place a hold on the decedent's IIM account, post agency records, i.e. lease records and notifies lessees and other applicable parties, i.e. mortgagee.
- b. Within first seven days of each month BIA agency furnish report to ALJ of deaths.
- c. Within 90 days of notification of death by BIA, BIA agency prepares and submits to the ALJ the family history data (OHA-7) together with identification number for potential heirs obtained from tribal enrollment and property inventory (BIAINV) listing all trust lands owned by the decedent from Land Titles and Records Office. Included with the package should be any creditor's claims, if filed, at the time of submission.

II. actions of alj (oha) upon receipt of estate documents from bia

- a. ALJ reviews documentation, determines adequacy and schedules hearing to probate the estate.
- b. ALJ schedules a hearing time, date and place and notifies potential heirs of the estate and creditors, if any.
- c. ALJ conducts hearing and takes testimony from potential heirs/devisees. There can be supplemental hearings if additional evidence disclosed in original hearing or if no one shows for initial hearing.
- d. ALJ issues Order Determining Heirs or Approving Last Will and Testament and sends Order to the heirs/devisees, creditors, appropriate BIA Agency Office and Land Titles and Records Offices.
- e. ALJ Orders contain a 60-day appeal period from date of issuance of the Order. If no appeals are filed, then, Order become final after expiration of the 60 day appeal period. If appealed, the appeal is filed with the Interior Board of Indian Appeals and a stay on the distribution of the estate is effected.

III. actions of land titles and records office upon receipt of alj orders

- a. Date stamps receipt of Order, microfilms the Order and places Order in queue pending expiration of 60 day appeal period. BIA will assess the utilization of modern information technology, i.e., imaging for the TMIP.
- b. Upon expiration of the 60 day appeal period and if no appeals were filed, LTRO posts the heirs/devisees of the estate to the applicable land ownership records within the LRIS in accordance with the ALJ's Order. **NOTE:** If creditor claims were filed against the estate and allowed in the Order, this does not prevent the posting of the heirs/devisees to the land ownership records because LTRO is responsible for accounting for ownership. Therefore, if the Order is final, LTRO post the ownership records in LRIS. It is the responsibility of the BIA agency Offices to assure funds from lands inherited from the decedent's estate are not distributed to

them but held in the estate account for payment of allowed claims. BIA field Offices also deal with life estates created by approved wills, owner agreements modifying payments, etc.

c. If an appeal is filed, LTRO assembles and prepares the official documentation associated with the Order Determining Heirs or Approving Last Will and Testament for delivery to the Interior Board of Indian Appeals who are responsible for addressing the appeal.

IV. actions of bia agency offices upon receipt of alj orders.

a. Receives and places Orders in queue pending expiration of 60 day appeal period.

b. Upon expiration of the 60 day appeal period and if no appeals have been filed, BIA agency Offices post agency records, i.e. lease and payment records, establish owner cards, prepare and mail appropriate documents for heirs/devisees to receive funds in the estate account, etc. to reflect heirs/devisees and comply with any other instructions specified by Order. If claims were allowed, prepare documentation to pay creditors prior to disbursing any of the decedent's estate funds to the heirs/devisees.

BIA APPRAISAL WORK PROCESS

I. actions of bia trust resources staff

a. Landowner or party seeking to effectuate a transaction, i.e., surface lessee, contacts the BIA agency office. Agency staff consults with individual and explains procedure for effecting transaction(s).

b. BIA takes application and processes for a determination of approval or disapproval.

c. If the application is approved, agency staff requests completion of an appraisal by the appraisal staff.

II. actions of bia appraisal staff

a. The appraiser receives the request for an appraisal and logs the request as work to do. In order to complete the appraisal, the appraiser must make a site inspection of the premises, research BIA, state and local data sources for information on comparable values for the type of transactions under consideration, verify land use and acreages, etc.

b. Appraiser prepares a written appraisal report taking into account his/her findings and arrives at the estimate of fair market value or appraised value.

c. Appraiser submits completed appraisal report to the Chief Area Review Appraiser who reviews the report to assure that it has been completed in compliance with the requirements of Uniform Standards of Professional Appraisal Practice (USPAP). If satisfactory, Chief Area Review Appraiser signs the appraisal report. If the appraisal report is found unsatisfactory, it is returned to the appraiser who prepared it for further development and re-submission.

III. actions of bia trust resources staff

a. Upon receipt by BIA agency office of approved appraisal report, staff processes transaction for approval or disapproval by the designated line official of the BIA.

OHA ADJUDICATION WORK PROCESS

Adjudicative Process

The probate adjudication process relates to all activities necessary for the ALJ to reach a decision as to

the persons and/or entities who take the decedent's interest in trust property, both real and personal. Steps in the probate adjudication process include:

Death Notification - The probate adjudication process is initiated when the BIA agency or tribal contractor is notified of the death of an individual owning an interest in trust real or personal property. The BIA agency receives the death notice and puts a hold on the deceased's account. BIA field Offices enter the date of death into the records.

Probate Heirship - In the probate process, the BIA agency lists probable heirs based on interviews and records. The Land Title and Records Office (LTRO) issues a Probate Inventory Report showing all tracts of land based on an inventory of the trust property to the BIA agency. BIA is required to complete the inventory as to estimated values of the land and certify the inventory report. Depending upon the state, an appraisal of the decedent's property may need to be obtained.

Assembly of the Probate Record - The BIA agency puts together the probate record and sends this to the Office of Hearing and Appeals (OHA).

ALJ Hearing and Decision - The ALJ and/or office employees review the information received from BIA or the tribal contractor for completeness, returning the case to BIA or the tribal contractor if additional work is necessary.

The ALJ determines where the majority of the probable heirs and/or devisees reside, in order to determine the appropriate location for a hearing. If necessary for the convenience of the probable heirs and/or devisees, the case may be transferred to another ALJ who is located closer to where the probable heirs and/or devisees reside.

The case is grouped with other cases needing hearings in the same general area in order to establish an efficient hearing docket. The probable heirs, devisees and other interested parties are notified of the date and location of the hearing. Some judges can conduct hearings throughout their territory for the entire year. For the convenience of those who attend and due to inclement weather, other judges can conduct hearings only during portions of the year. They use the remainder of the year to write their decisions.

If the hearing can be concluded, the matter is considered ready for decision. If the hearing cannot be concluded for any reason, usually relating to the convenience of the parties, non-attendance, inadequate evidence in the record or the ability of the parties to present all of their arguments, the case is rescheduled.

Once the case is fully submitted to the ALJ by the parties, and the transcript is prepared, it is ready for decision. Some cases are easily and quickly decided; others may need extensive legal research by the ALJ. In some cases, the ALJ's post-hearing work may reveal the necessity for an additional hearing.

Following the issuance of a decision, the parties can ask for rehearing by the ALJ. A request for rehearing is a prerequisite to the filing of an appeal with the Board. If rehearing is granted, the ALJ may find another hearing is required.

When a decision on rehearing is issued, the parties may appeal to the Board.

When the period for seeking rehearing or the period for taking an appeal from a decision after rehearing has expired, BIA or the tribal contractor can update the land title records and distribute the real and personal property in accordance with the ALJ's Order.

Appellate Reviews/Appeals of ALJ Order - Parties have 60 days to appeal an ALJ's Order on rehearing to the Board. If an appeal is filed, the regulations in 43 CFR 4.311 establish time periods for the filing of briefs on appeal. In some cases, the Board may shortcut the briefing period if the appeal shows on its face there are problems with it, such as untimely or frivolous. However, most probate cases appealed to the Board are fully briefed before consideration. Over the past ten fiscal years (1989-1997), the number

of probate cases appealed to the Board has averaged less than 15 per year.

LTRO Review and Modification - The BIA LTRO reviews the ALJ Order. If further corrective action is needed, the LTRO then sends the Order back to the ALJ for correction. If administrative modifications are needed, the LTRO will make the necessary corrections to the Order. Depending upon the type of error found in the title examination process determines if ALJ corrects or LTRO corrects.

Other functions relating to the realty and probate process within the BIA include recording the title documents, adjudicating titles, and modifying probate documents.

Recording Title Documents - BIA's LTRO is the office of record and custody for actual and constructive notice of all federal Indian land records and title documents and furnishes the certified copies of land records and title documents. Once title documents (e.g. conveyances or encumbrances) are received, a determination is made as to whether the title document is acceptable for recording as part of the title, and title action is completed (i.e. the document is made part of the title).

Adjudicating Titles - This process is concerned with reviewing the official record of Federal title against the applicable Federal, state, and administrative law to adjudicate the title document and the record of title regarding the ownership and encumbrance of Federal Indian lands. The decision is issued as a Certificate of Title, under a Torrens-based system of title, in the form of the certified Title Status Report or Probate Inventory Report. The effect of the decision is to certify the legal title effect, accuracy, reliability and authenticity of the adjudicated document. There is no appeal from the adjudication regarding federal Indian title decisions.

Modification of Probate Documents/ Non Probate Title Documents - This process involves all actions, decisions, and processes required to modify a probate document by adding land and/or interests in land, or by increasing the quantum of existing fractional interests in the Order of the ALJ or in the inventory of a probate document.